

deemed incompetent as aforesaid, and of orphans without a natural guardian, on petition of a person designated for the purpose by the Secretary of the Interior. When any Indian who has received an allotment of land dies before the expiration of the trust period, the Secretary of the Interior shall ascertain the legal heirs of such Indian, and if satisfied of their ability to manage their own affairs shall cause to be issued in their names a patent in fee simple for said lands; but if he finds them incapable of managing their own affairs, the land may be sold as hereinbefore provided: *Provided*, That the proceeds derived from all sales hereunder shall be used, during the trust period, for the benefit of the allottee, or heir, so disposing of his interest, under the supervision of the Commissioner of Indian Affairs: *And provided further*, That upon the approval of any sale hereunder by the Secretary of the Interior, he shall cause a patent in fee to issue in the name of the purchaser for the lands so sold: *And provided further*, That nothing in this section shall apply to the States of Minnesota and South Dakota.

(May 29, 1908, ch. 216, § 1, 35 Stat. 444.)

#### TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

#### YAKIMA INDIAN RESERVATION, WASHINGTON

Special provisions for sale of interests of Indian minors in lands of the Yakima Indian reservation, in the State of Washington, whether by direct allotment or by inheritance, were made by act Mar. 27, 1908, ch. 107, 35 Stat. 49.

#### CROSS REFERENCES

Sale of land of deceased allottee, see section 372 of this title.

### § 405. Sale of allotment of noncompetent Indian

Any noncompetent Indian to whom a patent containing restrictions against alienation has been issued for an allotment of land in severalty, under any law or treaty, or who may have an interest in any allotment by inheritance, may sell or convey all or any part of such allotment or such inherited interest on such terms and conditions and under such rules and regulations as the Secretary of the Interior may prescribe, and the proceeds derived therefrom shall be used for the benefit of the allottee or heir so disposing of his land or interest, under the supervision of the Commissioner of Indian Affairs; and any conveyance made hereunder and approved by the Secretary of the Interior shall convey full title to the land or interest so sold, the same as if fee-simple patent had been issued to the allottee.

(Mar. 1, 1907, ch. 2285, 34 Stat. 1018.)

#### TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2,

eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

### § 406. Sale of timber on lands held under trust

#### (a) Deductions for administrative expenses; standards guiding sales

The timber on any Indian land held under a trust or other patent containing restrictions on alienations may be sold by the owner or owners with the consent of the Secretary of the Interior, and the proceeds from such sales, after deductions for administrative expenses to the extent permissible under section 413 of this title, shall be paid to the owner or owners or disposed of for their benefit under regulations to be prescribed by the Secretary of the Interior. It is the intention of Congress that a deduction for administrative expenses may be made in any case unless the deduction would violate a treaty obligation or amount to a taking of private property for public use without just compensation in violation of the fifth amendment to the Constitution. Sales of timber under this subsection shall be based upon a consideration of the needs and best interests of the Indian owner and his heirs. The Secretary shall take into consideration, among other things, (1) the state of growth of the timber and the need for maintaining the productive capacity of the land for the benefit of the owner and his heirs, (2) the highest and best use of the land, including the advisability and practicality of devoting it to other uses for the benefit of the owner and his heirs, and (3) the present and future financial needs of the owner and his heirs.

#### (b) Undivided interests

Upon the request of the owners of a majority Indian interest in land in which any undivided interest is held under a trust or other patent containing restrictions on alienations, the Secretary of the Interior is authorized to sell all undivided Indian trust or restricted interests in any part of the timber on such land.

#### (c) Unrestricted interests

Upon the request of the owner of an undivided but unrestricted interest in land in which there are trust or restricted Indian interests, the Secretary of the Interior is authorized to include such unrestricted interest in a sale of the trust or restricted Indian interests in timber sold pursuant to this section, and to perform any functions required of him by the contract of sale for both the restricted and the unrestricted interests, including the collection and disbursement of payments for timber and the deduction from such payments of sums in lieu of administrative expenses.

#### (d) Representation of minors and others

For the purposes of this Act, the Secretary of the Interior is authorized to represent any Indian owner (1) who is a minor, (2) who has been adjudicated non compos mentis, (3) whose ownership interest in a decedent's estate has not been determined, or (4) who cannot be located by the Secretary after a reasonable and diligent search and the giving of notice by publication.

#### (e) Emergency sales

The timber on any Indian land held under a trust or other patent containing restrictions on

alienations may be sold by the Secretary of the Interior without the consent of the owners when in his judgment such action is necessary to prevent loss of values resulting from fire, insects, disease, windthrow, or other natural catastrophes.

**(f) Change in status without affecting contractual obligations**

A change from a trust or restricted status to an unrestricted status of any interest in timber that has been sold pursuant to this section shall not affect the obligations of the Secretary of the Interior under any contract of sale that is in effect at the time such change in status occurs.

(June 25, 1910, ch. 431, § 8, 36 Stat. 857; Pub. L. 88-301, Apr. 30, 1964, 78 Stat. 187.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d), is act June 25, 1910, ch. 431, 36 Stat. 855, as amended, which enacted sections 47, 93, 151, 202, 337, 344a, 351, 352, 353, 372, 403, 406, 407, and 408 of this title, sections 6a-1 and 16a of Title 41, Public Contracts, and section 148 of Title 43, Public Lands, and amended sections 191, 312, 331, 333, and 336 of this title and sections 104 and 107 of former Title 18, Criminal Code and Criminal Procedure. Sections 104 and 107 of former Title 18 were repealed and reenacted as sections 1853 and 1856 of Title 18, Crimes and Criminal Procedure, by act June 25, 1948, ch. 645, 62 Stat. 683. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1964—Pub. L. 88-301 designated existing provisions as subsec. (a), substituted “land” for “allotment”, “owner or owners” for “allottee” in two places, and “their benefit” for “his benefit”, and provided for deductions for administrative expenses from proceeds of sales without violation of treaty obligations or Constitutional compensation provision, for consideration of needs and best interests of owners and heirs, and for standards guiding sales, and added subsecs. (b) to (f).

CROSS REFERENCES

Klamath Tribe timber sales, see section 564x of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 564h, 697, 747 of this title; title 43 section 1617.

**§ 407. Sale of timber on unallotted lands**

Under regulations prescribed by the Secretary of the Interior, the timber on unallotted trust land in Indian reservations or on other land held in trust for tribes may be sold in accordance with the principles of sustained-yield management or to convert the land to a more desirable use. After deduction, if any, for administrative expenses under section 413 of this title, the proceeds of the sale shall be used—

(1) as determined by the governing bodies of the tribes concerned and approved by the Secretary, or

(2) in the absence of such a governing body, as determined by the Secretary for the tribe concerned.

(June 25, 1910, ch. 431, § 7, 36 Stat. 857; Pub. L. 88-301, Apr. 30, 1964, 78 Stat. 186; Pub. L. 100-580, § 13, Oct. 31, 1988, 102 Stat. 2936.)

AMENDMENTS

1988—Pub. L. 100-580 amended section generally. Prior to amendment, section read as follows: “The timber on

unallotted lands of any Indian reservation may be sold in accordance with the principles of sustained yield, or in order to convert the land to a more desirable use, under regulations to be prescribed by the Secretary of the Interior, and the proceeds from such sales, after deductions for administrative expenses pursuant to section 413 of this title, shall be used for the benefit of the Indians who are members of the tribe or tribes concerned in such manner as he may direct.”

1964—Pub. L. 88-301 substituted “timber” for “mature living and dead and down timber”, provided for sale of timber in accordance with principles of sustained yield or in order to convert the land to a more desirable use, provided for deductions for administrative expenses from proceeds of sales, made the Indians who were tribal members the beneficiaries instead of the Indians of the reservation, and struck out proviso which made section inapplicable to Minnesota and Wisconsin.

CROSS REFERENCES

Klamath Tribe timber sales, see section 564x of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 564h, 697, 747, 1724 of this title; title 43 section 1617.

**§§ 407a to 407c. Omitted**

CODIFICATION

Section 407a, acts Mar. 4, 1933, ch. 275, § 1, 47 Stat. 1568; June 16, 1933, ch. 104, 48 Stat. 311; Mar. 5, 1934, ch. 46, 48 Stat. 397; May 6, 1936, ch. 340, 49 Stat. 1266, which related to modification of existing contracts for sale of tribal timber, was omitted on authority of act May 6, 1936, which provided that authority to modify existing contracts for sale of tribal timber expire on Sept. 4, 1936.

Section 407b, act Mar. 4, 1933, ch. 275, § 2, 47 Stat. 1569, which related to modification of contracts for sale of timber to individual allottee, was omitted in view of the expiration of section 407a of this title.

Section 407c, act Mar. 4, 1933, ch. 275, § 3, 47 Stat. 1569, which related to preference to Indian labor in modified contracts, was omitted in view of the expiration of section 407a of this title.

**§ 407d. Charges for special services to purchasers of timber**

The Secretary of the Interior is authorized to charge purchasers of timber on Indian lands that are held by the United States in trust, or that are subject to restrictions against alienation or encumbrance imposed by the United States, for special services requested by the purchasers in connection with scaling, timber marking, or other activities under the contract of purchase that are in addition to the services otherwise provided by the Secretary, and the proceeds derived therefrom shall be deposited to the credit of the appropriation from which the special services were or will be provided.

(July 30, 1956, ch. 781, 70 Stat. 721.)

**§ 408. Surrender of allotments by relinquishment for benefit of children**

In any case where an Indian has an allotment of land, or any right, title, or interest in such an allotment, the Secretary of the Interior, in his discretion, may permit such Indian to surrender such allotment, or any right, title, or interest therein, by such formal relinquishment as may be prescribed by the Secretary of the Interior, for the benefit of any of his or her children to